

Protect Our Shoreline Ohana

September 27, 2001

DLNR Informational Meeting

We the representatives of Protect Our Shoreline Ohana, a group comprised of shoreline property owners and others who have an interest in the piers issue, wish to recognize the progress that had been made towards resolving this long-standing issue. Both sides have invested a considerable amount of time and effort in working for a fair and reasonable lease which would be acceptable to both the State of Hawaii and the pier owners.

There has been much progress made towards a permanent and reasonable solution since the issue of piers in and around Kaneohe Bay and other locations were brought before the Land Board in 1998. We have seen new enabling legislation (Act 261) enacted by the State to facilitate the processing of leases. In recent months the Land Board has approved the group processing of the Conservation District Use Application (CDUA) for the use of submerged lands and adopted a lease rent formula recommended by the DLNR staff. The DLNR is currently establishing procedures to implement a Special Action Plan for piers in Kaneohe Bay that includes the classification of piers by type of permit issued, surveying and bonding requirements. This position summary is intended to promote dialogue between the Land Board, DLNR and Pier Owners regarding the remaining issues that are being addressed as we move towards the final stages of implementation of this Special Action Plan.

POSITION SUMMARY:

1. We support the following:

- a. The concept of a long-term lease.
- b. We generally support the concept of a one-time payment, provided that the total eventually agreed upon, including all related costs, is reasonable.
- c. The department's offer to accommodate those who may not be able to make a one-time payment and offer to make year installment as a payment option.
- d. The concept of quiet enjoyment that will be provided for in each lease given to pier owners who participate in the program.
- e. The group processing of a CDUA by the DLNR for program participants.
- f. The requirement for shoreline survey, because we understand that it is a requirement of leasing process. Our group intends to meet this requirement by seeking out a surveyor who is able to conduct the required survey at a discount.

2. **We support, but with reservation, the following:**
- a. The adoption of a lease rent formula that uses the C/C Property Assessment of the adjoining property in estimating the value of submerged land. We believe that the adoption of this formula was based upon misstatements of fact made to the Board, and is therefore suspect. In the interests of expediency and in the spirit of compromise, we support the use of this formula, but also recommend that the DLNR make allowances and give credit for the fact that all participants are recreational users and who will bear the entire cost of construction and maintenance of their own respective piers.
3. **We strongly oppose the following:**
- a. The requirement of a performance bond equal to \$20 per square foot. While we understand that a performance bond is a requirement, we believe that the department has the ability to exercise some discretion and can accept payment held in trust in lieu of a performance bond per se.

We recommend that a fixed amount, e.g. \$500, be assessed on each participant in the program and that the entire sum be paid to the State in lieu of the performance bond to be held in an interest bearing trust account for the duration of the pier leases. During the term of the leases, the interest could either be accumulated or paid to the State. Upon the simultaneous expiration of the leases, the entire remaining principal would go to the State.

We believe that this recommendation is a win-win situation for both the State of Hawaii and the Pier Owners!

FOR THE RECORD:

Lease Rent Formula:

While we are not wholly satisfied with the lease rent formula and do not feel comfortable with the manner in which it was adopted, we believe that there is ample room for compromise.

We note the following for the record:

- a. The former Administrator of the Land Division, represented to the Board at the February 23, 2001 Land Board meeting that his department staff had done extensive research on the subject of pier rents in other States and that their recommendation was based on what a majority of the States were doing. Significantly, he did not provide any supporting research documentation at the meeting. The Land Board adopted the recommendation of the DLNR staff and specifically stated that it was basing its decision on the research that the DLNR staff had done. We have asked on numerous occasions for a copy of the research from DLNR and have never been provided with a copy of that research.

Research on this subject, however, was conducted Brian Durham, a legislative analyst (the Legislative Reference Bureau) at the request of Representative Colleen Meyer. The results of this research casts doubt on the representations made by the Administrator at the Land Board meeting on February 23, 2001.

The circumstances strongly suggest that the Administrator misrepresented the facts to the members of the Land Board and that the decision to adopt the recommendation of the DLNR staff was based on the incorrect facts.

The basis for the Land Board's adoption of the DLNR staff proposal is therefore called into question!

- b. The Land Board only took brief notice of the fact that there are substantial differences between piers used for commercial purposes and recreational piers in the State of Hawaii.
 - 1. Significant differences do exist, however. While nearly all commercial piers were built and maintained by the State of Hawaii, all recreational piers were built and maintained by the pier owners.
 - 2. While commercial pier lease rents are deductible the recreational pier rents will have to be fully absorbed by the pier owners.
 - 3. Commercial piers tend to be large structures that have a greater impact on the inshore submerged lands. Recreational piers are smaller and have virtually no noticeable impact on the shoreline.
 - 4. The DLNR justified their methodology for arriving at a value on submerged lands under residential piers by citing examples of commercial leases entered into by the Department of Transportation and the Division of Boating and Ocean Recreation. Those commercial leases used as examples used a formula ranging from a low of 36.5% to a high of 50% of the fast land value. The research conducted by Representative Colleen Meyer shows that throughout the United States, residential piers are treated very differently from commercial piers.

Coastal State Fees For Using Submerged Lands for a Residential Non-Commercial Pier⁽¹⁾

State	Lease, permit or other permission required to use submerged lands? ⁽²⁾	Fee or Rent to Use Submerged Lands?	Amount of Fee or Rent
Alabama	No.	No.	N/A
Alaska	No.	No.	N/A
California	Yes.	Yes.	Free. Applicant pays cost of issuing lease or permit.
Connecticut	Yes.	Yes.	One-time permit fee of \$0.40 per square foot, \$350 minimum.
Delaware	Yes.	Yes.	Unknown
Florida	No.	No.	N/A
Georgia	Yes. Revocable license.	No.	N/A
Louisiana	No. Exempt.	No.	N/A
Maine	Yes.	Yes.	Fair Market Rental Value (annual rent equals 2% of assessed value per square foot for the adjacent upland times the square footage of bottom land). \$100 application fee. \$100 minimum annual rent. \$1200 maximum annual rent.
Maryland	No. Exempt. Notice required.	No.	N/A
Massachusetts	Yes.	Yes.	Simplified license for piers of less than 300 square feet: \$50 application fee. Annual occupancy fee of \$1/yard. 10-year term. Standard license for piers of 300 square feet or more: \$100 application fee. Displacement fee of \$2/cubic yard for material removed. Occupancy fee of \$1/square yard times term of license. 20-year term.
Mississippi	No.	No.	N/A
New Hampshire	Yes.	Yes.	Application fee of \$100 per boat slip.
New Jersey	Yes.	Yes.	Annual rent: \$100 plus fair market rental value.

New York	No. Exempt.	No.	N/A
North Carolina	Yes.	Yes.	Simplified general permit application process for residential piers (2 boat maximum). \$100 application fee.
Oregon	Yes. Registration required.	Yes.	5 year term, one time fee of: (1) \$100 for a dock/float or boat house one thousand (1,000) square feet or less. (2) \$200 for a dock/float or boathouse from one thousand and one (1,001) square feet to two thousand (2,000) square feet in size. (3) Two hundred fifty dollars (\$250) for a dock/float or boathouse from two thousand and one (2,001) square feet to two thousand five hundred (2,500) square feet in size.
Pennsylvania	Yes. General permit by regulation for small docks (750 square feet).	Yes.	Small docks (750 square feet or less) – no fee. Other recreational docks - \$250/yr.
Rhode Island	Yes.	Yes.	Unknown.
South Carolina	Yes.	Yes.	One time permit fee of \$50 for non-commercial projects.
Virginia	Yes	Yes	Permit fee, one-time. \$25 if project cost does not exceed \$10,000. \$100 if project cost exceeds \$10,000.
Texas	Yes. Registration	Yes	One time fee of \$25.
Washington	No.	No.	N/A

Footnotes:

1. Whether permission to use submerged lands is required by a riparian residential landowner to construct a private non-commercial pier, and any lease or permit cost for such use of state-owned submerged lands.
2. Various other permits, authorizations or reviews may be required to construct a pier: environmental, land use, dredge and fill, coastal zone management, etc. Many of these permits require substantial costs or fees. This survey looked only at permission to use submerged lands.